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OFFICE OF PETITIONS

**Herten, Burstein, Sheridan, Cevasco,
Bottinelli & Litt, L.L.C.
Court Plaza North
25 Main Street
Hackensack NJ 07601**

In re Patent No. 6,453,044
Issue Date: September 17, 2002
Application No. 09/696,238
Filed: October 26, 2000
Attorney Docket No. LIT-016

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed February 7, 2011 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted above, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

As to item (1) the statement of unintentional delay is presently not acceptable since the petition not signed by a proper party. See 37 CFR 1.33(b) which states:

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under §3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The signature of Ryan Tsui is not recognized as a person of interest in this patented application. If this person is an assignee, then a statement under 37 CFR 3.73(b) should be submitted or with a renewed petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: **Mail Stop PETITION**
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Telephone inquiries should be directed to the Kimberly Inabinet at (571) 272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Ryan Tsui
 c/o Mackarl Enterprises, Inc.
 16960 Gale Avenue
 City of Industry, CA 91745